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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re K.G., a Person Coming Under the  
Juvenile Court Law.

ORANGE COUNTY SOCIAL  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

MARIO G., et al.,

Defendants and Appellants.

G057449

(Super. Ct. No. 18DP0152)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Antony C.  
Ufland, Judge. Affirmed.

Law Offices of Arthur J. LaCilento and Arthur J. LaCilento for Defendant  
and Appellant Mario G.

Law Offices of Vincent W. Davis and Vincent W. Davis for Defendant and  
Appellant Courtney G.

Leon J. Page, County Counsel, Karen L. Christensen and Deborah B.  
Morse, Deputy County Counsel, for Plaintiff and Respondent.

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In this juvenile dependency case, the juvenile court found Mario G. (Father) sexually abused his stepdaughter, S.H. The court also found S.H.'s mother, Courtney G. (Mother), attempted to cover up that abuse. Based on these findings, the court assumed jurisdiction over S.H. and her younger maternal half sister, K.G., and removed the girls from Mother and Father's custody. Mother and Father challenge the court's jurisdictional findings and disposition order as to K.G. only. For the reasons below, we affirm.

## I.

### FACTS

S.H. (now age 14) and K.G. (now age 4) are maternal half sisters. They lived with Mother, Father (K.G.'s father and S.H.'s stepfather), and their adult maternal half brother, Nathaniel. Nathaniel and Father frequently argued, and these arguments repeatedly led to physical violence between Nathaniel, Father, and Mother. In Mother's words, their home environment was "[n]othing but chaos."

#### A. *S.H.'s Allegations of Abuse and Subsequent Recantations*

After a family argument, Nathaniel reported to police that Father had inappropriately touched S.H.'s buttocks. The police interviewed S.H., who revealed that when she was about 11 years old, she was sleeping in her bed one night when Father came into her room, tried to touch her breast, pulled down her pants, put his face on her buttocks, and then exited the room. According to S.H., she woke up her Mother and told her what happened, but Mother said S.H. must have been dreaming and told her to go back to bed. S.H. then barricaded herself in her room by tying scarves to the door and K.G.'s crib because she did not want Father to return.

When the police interviewed Father, he denied S.H.'s accusation and claimed he only entered S.H.'s room to retrieve a pair of headphones. Mother offered a similar explanation involving headphones and assured the officer Father "wouldn't grab [S.H.'s] butt."

Police arrested Father for lewd and lascivious acts with a child, but shortly afterward, Mother took S.H. to the police department, where S.H. recanted her allegations and explained she had lied to get Father in trouble. Because S.H. changed her story, the police found it difficult to “differentiat[e] the truth from the lies” and released Father from custody.

Later that evening, a social worker interviewed S.H. in the family home. S.H. again claimed she lied about Father molesting her, asserting Father probably had been searching for his headphones and stating she had exaggerated what happened to put “fear” in Father. The social worker noticed S.H. used large words that she struggled to pronounce, and she suspected S.H. may have been coached. But when Father and Mother both denied any inappropriate touching occurred, the social worker deemed the abuse allegations unfounded and concluded her investigation.

Two days later, the Orange County Child Abuse Registry received a second referral about S.H., and the social worker reopened the investigation. In a second interview, S.H. repeated her earlier claim that she had “misunderstood” what happened, but Nathaniel reported Mother had called Father a “child molester” and shared a recording of Mother yelling at S.H. to tell the police “it didn’t happen.” Based on information acquired in that second investigation, the social worker obtained a protective custody warrant removing S.H. and K.G. from Mother and Father’s custody.

After arriving at the Orangewood Children and Family Center, S.H. said she was “ready to tell the truth” and began to sob. When the police interviewed her again, S.H. disclosed her original accusation was true. She described the inappropriate touching during the bunk bed incident and her Mother’s reaction afterward, and she explained Mother directed S.H. to recant so Father could return home. S.H. also disclosed that beginning shortly after K.G. was born, Father had repeatedly asked her to “massage” his penis.

The next day, Orange County Social Services Agency (SSA) filed a juvenile dependency petition on S.H.'s and K.G.'s behalf. Among other allegations, the petition alleged K.G. fell within the juvenile court's jurisdiction under Welfare & Institutions Code section 300, subdivisions (b)(1) and (j), based in part on Father's sexual abuse of S.H. The petition described the bunk bed incident and "massages," alleged Mother told S.H. to tell the police the abuse did not happen, and described Mother and Father's criminal histories.

B. *The Jurisdiction Hearing and Findings*

At the jurisdiction hearing, S.H. testified about the bunk bed incident, recounting that when she was 10 years old, Father came into her and K.G.'s bedroom at 2:00 a.m., pulled down S.H.'s pants and underwear, placed his face on her buttocks, and felt her upper chest under her t-shirt with his hand. S.H. further testified that she told her Mother about the incident a few minutes later, but Mother told her to go back to sleep. S.H. then barricaded herself in her room.

S.H. also testified about her family's cover-up efforts. According to S.H., the day after the bunk bed incident, K.G.'s paternal grandfather, Bob, told her that Father would not do what she claimed and the bunk bed incident "did not happen." After S.H.'s initial police report, Mother interrogated her about where Father touched her and accused S.H. of "ruining [Mother's] life." Mother then drove S.H. and K.G. to Father's parents' house, where Mother and K.G.'s paternal grandmother, Sharon, "took turns getting mad at" S.H., "made [her] reenact the night of the [bunk] bed incident" while grabbing her "breast," "butt," and "the private part between [her] legs," and asked if Father touched those places. S.H. lied to them and answered "no" because they were "scaring" her. S.H. further testified Mother and Sharon told her to "make up a story" for the police to get Father out of jail. S.H. complied by recanting, but on the way home from the police station, Mother accused S.H. of "ruining [her] life," and threatened to "end it all" by

“crash[ing] [their car] into a wall and kill[ing] [them] all.” According to S.H., she was “[t]errified” for her and K.G.’s lives.<sup>1</sup>

In its jurisdictional finding, the juvenile court amended the petition by striking certain allegations about the “massages” and Mother and Father’s criminal histories, but left intact the allegations about the bunk bed incident. The court then sustained the petition as amended.

In explaining its ruling, the juvenile court observed S.H.’s trial testimony about the bunk bed incident was “always consistent,” “straightforward,” and “credible,” while Mother’s testimony was at times “evasive” and “[s]eemed to be in blind support of” Father. The court acknowledged S.H. “did recant her statements a couple of different times and to different people,” but noted the most significant recantation came only after Father was arrested and Mother forced S.H. to recant.

### C. *The Disposition Hearing and Order*

At the bifurcated disposition hearing, the juvenile court removed K.G. and S.H. from Mother and Father’s custody. The court found there would be a substantial danger to K.G.’s physical health and safety, protection or physical or emotional well-being if she were returned home, and it vested custody of K.G. with SSA.

Mother and Father appealed from the court’s jurisdictional finding and disposition order as to K.G. only.

## II.

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<sup>1</sup> S.H. also testified how Father made her “massage” his penis on numerous occasions, but the juvenile court found that testimony not credible due to the lack of specifics, immediate reporting, and independent corroboration. SSA points out California law does not require corroboration of a child sexual abuse victim’s testimony. A contrary rule “would virtually insulate child molesters from prosecution [because] [g]enerally, the victim and the perpetrator are the only witnesses, and molestation frequently leaves no physical evidence.” (*People v. Harlan* (1990) 222 Cal.App.3d 439, 452.)

## DISCUSSION

### A. *Standard of Review*

We review the juvenile court's jurisdictional finding and disposition order under the substantial evidence standard. (*In re J.C.* (2014) 233 Cal.App.4th 1, 5, 6.) We must therefore “determine if substantial evidence, contradicted or uncontradicted, supports” the court's findings and order. (*In re I.J.* (2013) 56 Cal.4th 766, 773 (*I.J.*)). Substantial evidence is “evidence which is reasonable, credible, and of solid value.” (*In re Angelia P.* (1981) 28 Cal.3d 908, 924.) ““In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court.” [Citation.] “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.”” (*I.J.*, *supra*, at p. 773.)

### B. *The Jurisdictional Finding*

Mother and Father challenge the sufficiency of the evidence to support the juvenile court's order sustaining the petition and taking jurisdiction over K.G. under Welfare & Institutions Code section 300. We reject their argument because ample evidence supports the court's ruling.

A child comes within the juvenile court's jurisdiction under section 300, subdivision (b), when the child has suffered or there is a substantial risk the child will suffer serious harm or illness from her parents' failure or inability to adequately supervise or protect the child, or under subdivision (j) when the child's sibling has been abused and there is a substantial risk the child will suffer future abuse.

In sustaining the amended petition, the juvenile court found K.G. fell within subdivisions (b) and (j). Substantial evidence supports this finding. S.H.'s testimony, which the court found credible, established Father sexually abused S.H., and Mother and

Father engaged in a concerted effort to cover up the abuse. This constitutes substantial evidence K.G. was also at risk. “[S]exual abuse of one child may constitute substantial evidence of a risk to another child in the household — *even to a sibling of a different . . . age or to a half sibling.*” (See *Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 968, italics added.) “[A]berrant sexual behavior directed at one child in the household places other children in the household at risk, and this is especially so when both children are females.” (*Id.* at p. 970.) Further, the fact S.H. no longer resides in the home also “place[d] [K.G.] at greater risk” for abuse by Father because “[t]he object of his predatory actions, [S.H.], [was] no longer available to him.” (*Ibid.*) To make matters worse, the court found Mother seemed to be “protecting [Father] at any cost, even if that include[d] putting [S.H.] at risk.” The court thus correctly deemed K.G. at substantial risk of sexual abuse and serious physical harm.

Mother and Father challenge the juvenile court’s reliance on S.H.’s testimony. Based on S.H.’s retractions and various inconsistencies in her accounts, particularly about the date of the bunk bed incident, Mother and Father argue S.H.’s testimony that Father molested her lacked credibility. These arguments disregard the applicable standard of review. The substantial evidence standard requires us to leave credibility determinations to the juvenile court — and for good reason. “[C]redibility is governed by more than just the words transcribed by a court reporter.” (*In re Jessica C.* (2001) 93 Cal.App.4th 1027, 1043.) “We review a cold record and, unlike a trial court, have no opportunity to observe the appearance and demeanor of the witnesses.” (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 199 (*Sheila B.*).) “The juvenile court had the opportunity to observe the demeanor of the relevant witnesses . . . . It is not our role to interfere with the trial court’s assessment of the witnesses’ demeanor and credibility.” (*In re Naomi P.* (2005) 132 Cal.App.4th 808, 824.) We must defer “to the trier of fact on such determinations, and ha[ve] no power to judge the effect or value of, or to weigh the evidence; to consider the credibility of witnesses; or to resolve conflicts in, or make

inferences or deductions from the evidence. . . . It is not [our] function, in short, to redetermine the facts.” (*Sheila B.*, *supra*, 19 Cal.App.4th at pp. 199-200.)

For us to reject the testimony of a witness whom the juvenile court believed, “““there must exist either a physical impossibility that [her statements] are true, or their falsity must be apparent without resorting to inferences or deductions.”””” (*Bloxham v. Saldinger* (2014) 228 Cal.App.4th 729, 750.) As neither of those scenarios is present here, Mother and Father’s attacks on S.H.’s credibility cannot overcome the applicable standard of review. We must defer to the court’s finding a particular witness was credible, even if other witnesses contradict the witness and raise a reasonable suspicion about the witness’s testimony. (*People v. Maciel* (2013) 57 Cal.4th 482, 519.) “The testimony of a single witness is sufficient to uphold a judgment” (*Sheila B.*, *supra*, 19 Cal.App.4th at p. 200), and here, S.H.’s testimony amply supports the court’s jurisdictional finding as to K.G.

Mother next argues the juvenile court erred by failing to “articulate and reconcile the glaring inconsistencies” in the evidence. Not so. The court was under no obligation to expressly resolve all inconsistencies in the evidence or provide a statement of decision. (*In re Ammanda G.* (1986) 186 Cal.App.3d 1075, 1080-1081.) In any event, the court *did* address witness credibility and resolve the more notable evidentiary conflicts when delivering its ruling on jurisdiction. For example, the court acknowledged S.H.’s prior recantations, but disregarded them after taking into account the timing of and “circumstances in which [S.H.’s] recantations occurred.”<sup>2</sup> Further, the court described S.H.’s testimony as “consistent,” “straightforward,” and “credible,” while concluding Mother’s testimony was often “evasive” and “inconsistent.” Among other observations, the court noted Mother’s “rendition of how the May 2017 bunk bed incident happened”

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<sup>2</sup> At an earlier point in the proceedings, the juvenile court also noted the discrepancies in S.H.’s testimony and prior statements are “collateral or innocent misrecollections” that “largely involve trivial details.”



“did not make sense,” and it seemed Mother was “attempting to help [Father] hide” something.<sup>3</sup>

Mother also argues there is no evidence Father’s molestation of S.H. was “for purposes of sexual arousal or gratification” under Penal Code section 11165.1, as required by Welfare & Institutions Code section 300, subdivision (d).<sup>4</sup> Mother is wrong. There was substantial evidence Father attempted to fondle S.H.’s breasts, pulled down her pants and underwear, and placed his face against her buttocks. This conduct clearly meets the definition of “[s]exual assault” under Penal Code section 11165.1, particularly because the act was perpetrated in the middle of the night while S.H. was in her bed. It is inconceivable what purpose Father’s act may have had other than sexual arousal or gratification. “The manner of the touching itself . . . and the absence of any conceivable innocent explanation [is] dispositive.” (*In re R.C.* (2011) 196 Cal.App.4th 741, 750.)

We therefore conclude the juvenile court did not err in its jurisdictional findings.

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<sup>3</sup> Mother testified that the night of the alleged bunk bed incident, S.H. expressed fear that someone — either a burglar or possibly Father — was in her room, and Mother got out of bed to question Father, who was sleeping on the couch and who told her he had gone into S.H.’s room to retrieve his headphones. In finding this testimony not believable, the juvenile court observed: “The asleep and snoring might make sense if [Father] hadn’t ultimately admitted that, yes, he had gone into [S.H.’s] room not long before . . . to get his headphones. [Father] is an individual who has trouble sleeping. He needs the headphones in order to get to sleep. [But] [h]ow does he go from awake, needing the headphones to get to sleep one minute, then sound asleep on the couch and snoring minutes later? That testimony is inconsistent.”

<sup>4</sup> Under Welfare and Institutions Code section 300, a child falls within the jurisdiction of the juvenile court if he or she “has been sexually abused . . . as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household.” (§ 300, subd. (d).) Penal Code section 11165.1 defines “[s]exual assault” to include “[t]he intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification.” (Pen. Code, § 11165.1, subd. (b)(4).)

### C. *The Disposition Order*

Mother and Father also challenge the juvenile court's dispositional findings and order under Welfare & Institutions Code section 361<sup>5</sup> (§ 361), in which the court found a substantial risk of future harm to K.G. if the court returned her to either parent. Under section 361, "[b]efore the court may order a child physically removed from his or her parent, it must find, by clear and convincing evidence, that the child would be at substantial risk of harm if returned home and that there are no reasonable means by which the child can be protected without removal. [Citations.] The jurisdictional findings are prima facie evidence that the child cannot safely remain in the home. [Citation.] The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child. [Citations.] In this regard, the court may consider the parent's past conduct as well as present circumstances." (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917 (*Cole C.*)). "Although the court must consider alternatives to removal, it has broad discretion in making a dispositional order." (*Id.* at p. 918.)

Here, after hearing oral argument on alternatives to removal, the juvenile court found by clear and convincing evidence there would be a "substantial danger to [K.G.]'s physical health and safety, protection or physical or emotional well-being" if she were returned home, citing "what was going on in that household," Father's "inappropriate touching," and the parents' "concerted effort to cover that up." It

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<sup>5</sup> Under section 361, after a minor is adjudged a dependent child of the court under section 300, the juvenile court "may limit the control to be exercised over the dependent child by any parent or guardian." (§ 361, subd. (a).) The statute further specifies the child shall not be taken from the physical custody of his or her parents unless the juvenile court finds by clear and convincing evidence "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody . . ." (§ 361, subd. (c)(1).)

reasoned: “To vest custody with parents would be detrimental to the child and to vest custody with [the] Social Services Director is required to serve the child’s best interest.”

Mother contends insufficient evidence supported the juvenile court’s finding that no reasonable means existed to protect K.G. absent removing her from Mother’s custody. We disagree. Although much of the focus in the proceedings below was on Father’s conduct, Mother here was not a passive bystander. The court found she demonstrated “blind support” of Father, was “protecting [him] at any cost, even if that include[d] putting [S.H.] at risk,” engaged in “concerted efforts . . . to convince [S.H.] that nothing happened,” and “help[ed] [Father] hide” the abuse. Indeed, substantial evidence showed that, rather than *protecting* S.H., Mother engaged in a pattern of intimidation tactics designed to force S.H.’s recantation and absolve Father of liability. These included accusing S.H. of ruining Mother’s life, forcing S.H. to reenact the abuse while grabbing S.H.’s body and asking if Father touched those places, demanding that S.H. make up a story to get Father out of jail, and threatening to crash their car and “kill [them] all.”

Mother contends the juvenile court erred by failing to consider her proposed less-restrictive alternatives, such as removing Father from the home and returning K.G. to her sole care, or living separately from Father in the home of the paternal grandparents. The record belies this assertion. The court permitted counsel to present argument on proposed less-restrictive alternatives, but ultimately concluded removal was in K.G.’s best interest. Moreover, under the circumstances, removing Father from the home or allowing Mother and K.G. to live with the paternal grandparents would not ameliorate the substantial danger to K.G. because both Mother and the paternal grandparents actively participated in efforts to conceal Father’s abuse.

Mother further asserts there was insufficient risk to justify K.G.’s removal because Mother was “clearly putting K.G.’s needs ahead of [Father]” by the time of the disposition hearing and had not violated SSA’s visitation guidelines. These

considerations, even if true, do not mandate reversal. A juvenile court “has broad discretion in making a dispositional order” and “may consider the parent’s past conduct as well as present circumstances.” (*Cole C.*, *supra*, 174 Cal.App.4th at pp. 917, 918.) Here, Mother’s past conduct supports the court’s decision to remove K.G. from her custody.

Father’s challenge of the dispositional findings and order hinges on his argument the juvenile court erred in assuming jurisdiction over K.G., an argument we rejected for the reasons stated above.

We therefore find no error in the juvenile court’s disposition order removing K.G. from the custody of her parents.

### III.

#### DISPOSITION

The juvenile court’s jurisdictional findings and disposition orders are affirmed.

ARONSON, ACTING P. J.

WE CONCUR:

THOMPSON, J.

GOETHALS, J.